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Attorneys for
BROCADE COMMUNICATIONS SYSTEMS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**MARY E. BARBOUR AS TRUSTEE FOR THE)
MARY E. BARBOUR FAMILY TRUST ONE,)
Derivatively On Behalf of BROCADE)
COMMUNICATIONS SYSTEMS, INC.,)**

Plaintiff,

vs.

**GREGORY L. REYES, DAVID L. HOUSE,)
MICHAEL KLAYKO, RICHARD)
DERANLEAU, KUMAR MALAVALLI,)
ANTONIO CANOVA, MICHAEL J. BYRD,)
STEPHANIE JENSEN, NEIL DEMPSEY,)
SANJAY VASWANI, L. WILLIAM KRAUSE,)
ROBERT R. WALKER, GLENN C. JONES,)
MICHAEL J. ROSE, SETH D. NEIMAN,)
NICHOLAS G. MOORE, CHRISTOPHER B.)
PAISLEY, WILLIAM K. O'BRIEN, LARRY)
SONSINI, MARK)**

Case No. 08-CV-2029

**DECLARATION OF PETER E. ROOT
REGARDING FAILED ATTEMPTS TO
FILE ELECTRONICALLY**

1 I, Peter E. Root, declare as follows:

2 1. I am a member of the bar of the State of California and a partner of the law
3 firm of Dewey & LeBoeuf LLP, attorneys for Brocade Communications Systems, Inc. ("Brocade")
4 reporting to the Special Litigation Committee of the Board of Directors. Pursuant to Rule VI.E of
5 General Order No. 45 (Electronic Case Filing) of the United States District Court for the Northern
6 District of California, I submit this declaration in connection with the attempts to electronically file
7 certain documents on August 1, 2008, which failed due to technical difficulties, which delayed the
8 filing of Brocade's motion to dismiss and supporting papers in this action. The matters set forth
9 herein are within my personal knowledge, and I could and would testify to them under oath if called
10 as a witness.

11 2. This shareholder derivative action is related to *In re Brocade Communications*
12 *Systems, Inc., Derivative Litigation*, Case No. C05-02233 CRB, which is comprised of several
13 consolidated shareholder derivative actions (hereinafter, the "Consolidated Case"). In the
14 Consolidated Case, this Court's Order Setting Schedule For Special Committee, dated June 18, 2008,
15 directed the Special Litigation Committee to file any amended Complaint it wished to present to the
16 Court, as well as any motions to dismiss or stay the other related derivative actions against Brocade,
17 by August 1, 2008.

18 3. As set forth below, my staff and I experienced severe technical difficulties in
19 attempting to file the Second Amended Complaint on behalf of the Special Litigation Committee in
20 the Consolidated Case. The filing of the motion to dismiss and, alternatively, to realign the parties
21 and stay the proceedings in the present action was contingent upon the filing of the Second Amended
22 Complaint in the Consolidated Case. As a result of the technical difficulties with the electronic
23 filing of Second Amended Complaint, the electronic filing of the motion dismiss (or realign and
24 stay) in the present case was delayed for several hours, being completed at about 3:15 a.m. on
25 August 2, 2008.

26 4. On August 1, 2008, I and other attorneys and staff resident in Dewey &
27 LeBoeuf's offices located in East Palo Alto, California, attempted to electronically file the Second
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1 Amended Complaint which, pursuant to this Court's Order Setting Schedule For Special Litigation
2 Committee, was due on August 1, 2008. We made multiple attempts to electronically file the 282-
3 page Second Amended Complaint, each of which failed due to technical problems, before
4 successfully completing the filing of the Second Amended Complaint at about 12:04 a.m. on August
5 2, 2008 – that is, four minutes past the midnight deadline for filing on August 1, 2008.

6 5. Specifically, the first attempt to electronically file the 282-page Second
7 Amended Complaint was commenced at or about 8:00 p.m. on August 1, 2008. Because of the size
8 of the Second Amended Complaint, we separated the document into several portions. The first 50-
9 page portion of the Second Amended Complaint was accepted by the ECF system at or about 8:15
10 p.m., but a subsequent portion of the complaint was rejected. My staff then broke the rejected
11 portions of the complaint into smaller increments, and attempted to electronically file these portions
12 of the complaint at or about 8:45 p.m. This attempt again failed.

13 6. My staff then broke these subsequent portions of the Second Amended
14 Complaint into even smaller increments, and we again attempted to electronically file the complaint
15 at or about 9:00 p.m., starting with the same 50-page initial portion of the complaint that the ECF
16 system has accepted in the initial attempt. This time, the ECF system rejected the 50-page initial
17 portion of the complaint that previously had been accepted.

18 7. My staff then broke the initial 50-page portion of the Second Amended
19 Complaint into smaller increments, and began renewed attempts to file the complaint at or about
20 9:30 p.m. We experienced several failed attempts to electronic file the increments making up the
21 initial 50 pages of the complaint, and after each failed attempt we broke the complaint into ever-
22 smaller increments. Eventually, the increments making up initial 50-page portion of the complaint
23 were accepted by the ECF system, and we continued to load additional portions of the complaint into
24 the ECF system.

25 8. At or about 10:30 p.m., our attempt to load another portion of the complaint
26 was rejected by the ECF system and, at the same time, the ECF system rejected all of the earlier
27 portions of the complaint that we had loaded into the ECF system to that point. As a result, we had
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1 to start over with the filing, from the beginning of the complaint.

2 9. From 10:30 p.m. to 11:30 p.m. on August 1, 2008, my staff made several
3 more attempts to load ever-smaller increments of the 282-page Second Amended Complaint into the
4 ECF system, with the result that each attempt was rejected by the ECF system at differing points in
5 the loading sequence.

6 10. Not until we had separated the Second Amended Complaint into 28 electronic
7 files did the ECF system accept the filing. This successful attempt was commenced at about 11:30
8 p.m. on August 1, and the final increment of the complaint (and the complaint as a whole) was
9 accepted by the ECF system at about 12:04 a.m. on August 2, 2008.

10 11. Upon completion of the filing of the Second Amended Complaint in the
11 Consolidated Case, we began electronic filing of the motions and supporting papers filed by Brocade
12 in the present action and the Consolidated Case. These filings were completed at about 3:15 a.m. on
13 August 2, 2008.

14 I declare under penalty of perjury under the laws of the United States of America that
15 the foregoing is true and correct, and that this declaration was executed on the 3rd day of August,
16 2008, at East Palo Alto, California.

17 /s/ Peter E. Root
18 Peter E. Root
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